CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 2/13/02 Item No. 4.d.

File Number
PDCSH 01-09-088

Application Type
Planned Development Prezoning/Rezoning

Council District
4

Planning Area
Alviso

Assessor's Parcel Number(s)
015-31-054, 002, 063

PROJECT DESCRIPTION — Completed by: Elena Lee & Rob Eastwood

Location: North side of State Route 237, between Zanker Road and Coyote Creek

Gross Acreage: 174.4	Net Acreage: 174.4	Net Density: N/A
Existing Zoning: A(PD) Planned Development Zoning	Existing Use: Agricultural, residence, vacant, vacant WPCP Buffer Lands	
Proposed Zoning: A(PD) Planned Development Zoning	Proposed Use: 180 megawatt simple cycle power generation facility and up to 2,227,000 gross square feet of low intensity industrial uses consisting of communications facilities in warehouse style buildings, landscaping and an access driveway	

GENERAL PLAN — Completed by: EL

Alviso Planned Community: Light Industrial, Public/Quasi-Public

Project Conformance:
[x] Yes [ ] No
[x] See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING — Completed by: EL

North:	Water Pollution Control Plant buffer lands/treatment ponds	A Agriculture, IP Industrial Park
East:	Industrial Park	City of Milpitas
South:	State Route 237, Industrial Park	IP Industrial Park
West:	Water Pollution Control Plant buffer lands	A Agriculture, RM Residential Multifamily

ENVIRONMENTAL STATUS — Completed by: EL

[x] Environmental Impact Report found complete on April 3, 2001
[ ] Negative Declaration circulated on

[ ] Exempt
[ ] Environmental Review Incomplete

FILE HISTORY — Completed by: EL

Annexation Title: Lick No. 6, Lick No. 27 — Date: February 23, 1962, September 12, 2001

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

[ ] Approval
[X] Approval with Conditions

Date: _____

Approved by: _____
[ ] Action
[ ] Recommendation

APPLICANT/OWNER	CONSULTANT	ENGINEER
Patrick Ryan Calpine Corporation 6601 Koll Center Pkway, Ste. 100 Pleasanton, CA 94566	Valerie Young CH2M Hill 1737 North First Street, Suite 300 San Jose, CA 95112	

PUBLIC AGENCY COMMENTS RECEIVED Completed by: Elena Lee

Department of Public Works

See attached memorandum.

Other Departments and Agencies

See attached memorandum from the Building Division

GENERAL CORRESPONDENCE

None

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicants, Calpine Corporation and USDataport are proposing to rezone the subject property from A(PD) Planned Development to A(PD) Planned Development to allow the development of a 150 megawatt simple cycle power generation facility, the Los Esteros Critical Energy Facility (LECEF), and corresponding modifications to the previously approved communications facility project (PDCSH00-06-048) consisting of 2.227 million gross square feet of low intensity industrial uses in warehouse-style buildings, a 49.9 megawatt power generation facility, landscaping and an access driveway on 174.4 gross acres.

The project site is comprised of three large parcels bordered by State Route 237 to the south, Coyote Creek and its adjacent flood control channel to the east, Water Pollution Control Plant (WPCP) buffer land and sludge ponds to the north and WPCP buffer land and Zanker Road to the west. The two eastern parcels are privately-owned and currently mostly vacant, with the exception of a few residences. The parcels previously were used for agricultural purposes and contained several small structures that were demolished with permits for public health safety (See attached memo from Building Division). The western parcel is owned by the City and is vacant except for a small water transmission pump station facility located at its northwest corner.

Planned Development Zoning PDCSH00-06-048

The original Planned Development Zoning, PDCSH00-06-048, allowed 2.227 million gross square feet of warehouse-style buildings, and landscaping on the privately owned portion of the site and the development of the Central Reliable Energy Center (CREC) on either the privately-owned properties or on a 20.29-acre portion of the City-owned WPCP Buffer Land property that comprises the western half of the project area. The CREC would contain natural gas co-generation equipment with the capacity to produce up to 49.9 Mega-watts of energy, storage tanks for recycled water, diesel fuel and ammonia, an electric switchyard and other equipment. In addition to the CREC, the project also included 89 diesel backup generators to provide emergency power during periods of interruption of electrical service from the distribution system or transmission grid.

Council Direction

The PD zoning was approved by City Council on April 3, 2001 with a condition that the applicant would explore alternative reliable power generation technology to reduce the need to rely upon diesel backup generators. The Council, concerned with the air quality impacts of the diesel backup generators, included the following condition in the approved zoning:

> 1. *Energy and Environment. Prior to issuance of PD permits for any campus building which will draw power from the electrical grid, the applicant has agreed to and shall limit the use of diesel generators to 25 hours per year and provide to the Director of Planning a plan which achieves the following goals:*
>
> a. *Elimination of the use of diesel generators as the source of backup power for the USDataport campus buildings.*
> b. *Implementation of environmentally superior technology for power generation and supply alternatives that will reduce impacts to local and regional air quality to the extent such alternatives are available, reliable, and commercially feasible.*
> c. *Use of best commercially feasible available technology for plume visibility reduction.*
> d. *Implementation of a-c above in a manner that is compatible with the City's General Plan; the Mayor's Smart Energy Strategy recently approved by the Council that calls for energy generation facilities located in appropriate industrial zones; California laws and regulations; and the Final Environmental Impact Report (FEIR).*

In response to Council direction, the applicant resubmitted the subject application to replace the CREC and 89 diesel backup generators with the Los Esteros Critical Energy Facility (LECEF) on September 10, 2001. The LECEF is a 180-megawatt simple cycle power generation facility that will be placed in the central part of the project site that was originally approved for the development of the US Dataport buildings. It would be directly south of the parcel that has been acquired by the Pacific Gas And Electricity (PG&E) for the development of a substation, recently approved as part of the Northeast San Jose Transmission Project, by the California Public Utilities Commission. The LECEF would provide for a more efficient and less polluting energy facility as requested by the City Council. The LECEF will initially provide power to the State of California through a contract between the Calpine Corporation and the California Department of Water Resources. The electricity produced by the plant will be gradually phased for use by the data center as it is built. Ultimately, the LECEF will provide energy exclusively to the data center.

Regulatory Background

The California Energy Commission (CEC) has the exclusive land use permitting authority for thermal electrical power plants 50 megawatts or larger and acts as the lead agency for CEQA as provided for under the Warren Alquist Energy Resources Conservation and Development Act ("Warren Alquist Act"). A certificate issued by the CEC under this process acts in lieu of and supersedes any permits, certificates, or other entitlements required by any federal, state, regional, or local agencies for the subject property. Prior to approving a power plant application, the CEC is required to find that the proposed site and related facilities comply with relevant local standards, ordinances or laws, unless certain findings regarding public convenience and necessity can be made.

In response to anticipated energy shortages, on February 8, 2001, the Governor of California passed Executive Order D-26-01 which mandated that all simple cycle thermal power plants that have a complete application by December 31, 2001 and can be brought online by August 31, 2002 be reviewed under the CEC's expedited four month licensing process. As the CEC has determined that the Los Esteros Critical Energy Facility (LECEF) portion of the proposed project has met these requirements and is planned to be operational by this summer, it is currently being reviewed by the CEC under this expedited process. Simple cycle power plants that are reviewed under the expedited 4-month process must meet several criteria in order to remain eligible for this streamlined process. These criteria are listed in Public Resources Code 25552(e), which provide, in part, as follows: *In order to qualify for the procedure established by this section, an application shall satisfy the requirements of Section 25523, and include a description of the proposed conditions of certification that will do all of the following: (1) Assure that the thermal power plant and related facilities will not have a significant adverse effect on the environment as a result of construction or operation. (2) Assure protection of public health and safety. (3) Result in compliance with all applicable federal, state, and local laws, ordinances, and standards.*

As the LECEF / Dataport project site currently has a Planned Development Rezoning that allows the US Dataport Facility, but not a 180 megawatt power plant, there is a zoning conflict which would prevent the review of LECEF under the 4 month process in that the currently proposed project does not conform to the existing zoning on the property. In order for the LECEF to remain in the CEC's four-month process, the Dataport project site needs to be rezoned to allow the proposed 180 megawatt power plant so that the CEC may make the compliance with local laws, ordinances and standards finding required under State law for the power plant proposal.

Within the CEC licensing process for the LECEF, a Staff Assessment dated December 31st, 2001 and an Addendum to that Staff Assessment dated February 6, 2002 (collectively, the "Staff Assessment") have been released and are being used as the CEQA document for the City in hearing on the Dataport / LECEF rezoning. Following a City decision on the Rezoning, the CEC will begin evidentiary hearings, which will end with a decision by the California Energy Commission body on whether or not to certify the proposed LECEF for operation. If the City does not approve a Rezoning that allows the LECEF on the project site, the power plant will not remain in the CEC's 4-month process, but may still be processed under a lengthier certification process through the CEC.

Project Description

The proposed power generation facility or LECEF would be located on the central southwest portion of the site that was previously zoned for data center buildings. The LECEF would include four GE gas turbines with chillers, fuel gas compression facilities, power generators, selective catalytic reduction (SCR) for emission control, associated instruments/wiring and two 90-foot tall combustion towers. Each turbine will produce up to 45 megawatts. The development of the 2.227 million square foot data center communication facility would take place on the remainder of the two eastern parcels, surrounding the LECEF to the south, east and the far north. The PG&E substation would be developed directly north of the power generation facility and south of the data center buildings. The data center, conceptually, would take the form of ten large rectangular buildings ranging in size from 195,000 square feet to 260,000 square feet and in height from 35 to 85 feet. The maximum height of the data center buildings will be increased through the rezoning because a substantial portion of the site originally zoned for the data center buildings will be replaced by the LECEF. Because the boundaries of the entire project are not changing, the height of the data center buildings must be increased to accommodate the same amount of approved building

square footage in a smaller footprint. The maximum height allowed will be the maximum under the General Plan, which is 100 feet. Access to the project would be provided by a private street connecting the project site to Zanker Road through the City-owned buffer land property. Landscaping and a bike trail would be installed as part of the construction of the private street. The 20.29-acre portion of the City-owned WPCP Buffer Land property that comprises the western half of the project area, will be rezoned to allow the development of uses enumerated by the *Council Policy on the Uses of WPCP Buffer Lands* or energy facilities, which is consistent with the current zoning.

PUBLIC OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 1,000 feet of the project site. The City is the primary property owner in this area, so notices were sent to the nearest private property owners beyond the 1,000-foot notification area. Notices for the project and the project EIR, and the CEC's environmental document have also been published in the local newspaper and have been posted on the City's and the Energy Commission's web site. The CEC also conducted three publicly-noticed workshops to introduce the project and answer questions and concerns about the proposed power plant. The first workshop held on November 5, 2001 was an informational hearing that included a guided tour of the proposed project site. The second workshop, held on November 6, 2001, was a data response/issue resolution session to address any concerns by the public. The third workshop held on January 14, 2002, was held to address issues on the environmental Staff Assessment of the potential impacts of the project.

GENERAL PLAN LAND USE CONFORMANCE

The proposed rezoning is generally consistent with the San José 2020 General Plan Land Use/Transportation Diagram designations of Light Industrial and Public/Quasi-Public and with the Alviso Master Plan (AMP). The data center buildings and the LECEF are proposed for development on the portion of the site with a general plan designation of Light Industrial. The buffer lands, which are designated as Public/Quasi-Public on the General Plan, are proposed to allow development of WPCP-supporting uses, utilities or power generation facilities. Per the *City Council Policy on Use of San Jose/Santa Clara Water Pollution Control Plant Lands*, dual use on buffer land, which includes construction of permanent structures, may be allowed if the uses provide multiple benefits to the City. The benefits include maximizing open space and adjacent buffer land, utilizing technologies that are energy efficient, and limiting public exposure to the plant. This is consistent to the previously-approved zoning (PDCSH00-06-048). Analysis of the project's General Plan conformance is provided below.

ENVIRONMENTAL REVIEW

The environmental impacts of this project were addressed by an Environmental Impact Report (EIR) entitled "US Dataport Planned Development Rezoning and Prezoning," certified by City Council Resolution No. 70259 on April 3, 2001. The LECEF portion of this project, as discussed above, was analyzed under a separate CEC document, the Staff Assessment. Analysis of the project's environmental impacts is provided in the following sections.

Environmental Review Procedure

On March 13th, 2001, the Planning Commission certified the Final Environmental Impact Report (FEIR) for the US Dataport project, which included the US Dataport facility and the Central Reliability Energy

Center (CREC) a 49 Megawatt energy generation facility. The Planned Development Rezoning now being considered entails changes to the USDataport project that will have environmental clearance through two different documents, the US Dataport Final EIR and the CEC's Staff Assessment for the LECEF. Modifications to the US Dataport facility within this PD Rezoning entail the rearrangement of buildings on the project site to show the placement of the LECEF and the PG&E Substation. This rearrangement will not expand the building envelope of US Dataport beyond the project evaluated within the original FEIR. Thus, as changes to the US Dataport portion of the project would not entail new buildings or uses or project site areas and conditions that were not sufficiently evaluated within the original FEIR, the environmental clearance for this portion is the previously-certified US Dataport FEIR, and no additional environmental analysis is necessary.

The second portion of the PD rezoning, the LECEF, was not considered within the US Dataport FEIR and would entail new on-site uses and possible significant impacts. As stated above, the California Energy Commission has the exclusive authority to certify the LECEF operations as part of its power plant siting process. Under this process, the CEC assumes the role of the "lead agency" in preparing the necessary environmental documents and analysis per the California Environmental Quality Act (CEQA). The Warren Alquist Act has special provisions regarding the preparation of environmental documents by the CEC and their use by other agencies. In contrast to other public agencies in California, the CEC does not prepare Negative Declarations or Environmental Impact Reports, but instead prepares Staff Assessments, which evaluate the environmental and social impacts of an energy facility, as well as its technical merits.

In regards to the use of CEC documents by other public agencies for CEQA purposes, the Warren Alquist Act states: (Public Resources Code Section 25519 (c)): *If the commission prepares a document or documents in the place of an environmental impact report or negative declaration…, any other public agency that must make a decision that is subject to the California Environmental Quality Act, Division 13 (commencing with Section 21000), on a site or related facility, shall use the document or documents prepared by the commission in the same manner as they would use an environmental impact report or negative declaration prepared by a lead agency.*

Under the auspices of the Warren Alquist Act, the City of San Jose is using the CEC's Staff Assessment as the EIR equivalent for the LECEF project and acting as a "responsible agency" under CEQA.

A second consideration regarding environmental clearance for the LECEF is the future expansion of the facility. Under Public Resources Code 25552(e)(5) as modified under the Governor's Executive Order, the LECEF will be required to convert to a combined cycle power plant within three years or discontinue operations. The CEC has stated that this conversion process will require the applicant to re-apply for certification through a discretionary process administered by the CEC. The CEC has indicated that they have not analyzed the impacts from a combined cycle power plant at this stage because of the future discretionary process that will be required for that conversion, and that they will perform that environmental analysis as a part of the future application process.

As the City has not been provided with any environmental documents from the CEC that evaluate the future combined cycle power plant, staff is not proposing that the Commission make any decision on that possible element of the project at this time. While the future combined cycle power plant will not include expansion of the building envelope, additional cooling towers will be added and new air quality, visual, and noise impacts are expected to occur. As these future environmental impacts are not evaluated within the CEC's Staff Assessment for LECEF, the City can only make a decision regarding the simple cycle

power plant, and must evaluate any future application for a combined cycle power plant when environmental clearance has been completed.

Environmental Issues

Air Quality

The Planned Development rezoning entails removal of the CREC energy facility and 89 backup diesel generators and replacement with the LECEF. This will result in new, but similar air quality impacts to the original project. The majority of US Dataport air quality impacts originated from the CREC and diesel generators. Table 1, shown below, details the emissions of both the LECEF and original US Dataport Facility. (The measurements in Table 1 are based on the CREC operating in conjunction with back up diesel generators being run and tested approximately 50 hours per year) In comparison, both projects will have comparable pollutant emissions, but will generate different amounts of power. Overall, the LECEF will have lower Nitrogen Oxide (NOx) and Carbon Monoxide (CO) emissions than the original USDataport project while incrementally increasing Fine Particulate Matter (PM_{10}) emissions. However, on a per Megawatt basis, the power plant will be much less polluting than the original project.

Table 1 – US Dataport & LECEF Air Quality Comparison (tons per year)

	Megawatts (Mw) Produced	**Nitrogen Oxide (NOx)**	**Tons per Mw**	**PM_{10}**	**Tons per Mw**	**Carbon Monoxide**	**Tons per MW**
Original US Dataport Project (CREC & Generators)	49 (CREC) 178 (gen.)	120.2	2.4	41.7	0.85	75.1	1.53
LECEF	180	75.4	0.41	44.2	0.25	75.6	0.42
City significance thresholds	-----	15 tpy		15 tpy		Same as CEC	

As part of the power plant siting process, the LECEF must meet Bay Area Air Quality Management (BAAQMD) New Source Review Guidelines and comply with the conditions of certification imposed by the CEC. Per BAAQMD requirements, all new Nitrogen Oxide (NOx) and Precursor Organic Compound (POC) emissions which exceed 15 tons per year (tpy) are required to obtain offsets by purchasing emission reduction credits (ERC) at a ratio of 1/1.15 and 1/1, respectively. As both Nitrogen Oxide and POC pollutants contribute to the creation of Ozone, BAAQMD allows POC credits to be purchased for NOx emissions. The applicant has purchased 124.2 tpy of credits to meet BAAQMD requirements. The origins of these emission reduction credits are other regional facilities that have either reduced emissions or shut down operations between 1993 and 1999. Of the 124.2 credits purchased, 78.4 tpy are located in San Jose and 113 tpy are located within Santa Clara County. The remaining 11.4 tons are from facilities in the East Bay area.

In evaluating air quality impacts within the Staff Assessment, the CEC analyzed the effect of the LECEF's emissions upon ambient air quality, established in concentrations of pollutant emissions. Any changes to pollutant concentrations are evaluated against State EPA standards. Impact modeling within the CEC's Final Staff Assessment, shown below in Table 2, determined that the project would not cause NOx, Sulfur Dioxide (SO_2), and CO concentrations to surpass State thresholds. However, current concentrations of

PM_{10} in San Jose surpass state thresholds and the project would contribute cumulatively to this problem. This conclusion is reflected in statistics that show the Bay Area remaining in "non-attainment" for State standards over the past three years.

Table 2 – LECEF Modeled Impacts (micrograms per cubic meter)

Pollutant	Averaging Time	Modeling Impact	Background	Total Impact	Limiting Standard	Percent of Standard
NOx	1 hour	225.2	241	466.2	470	99%
PM_{10}	24 hour	1.32	114	115.32	50	**231%**
CO	1 hour	246	12,375	12,621	23,600	55%
SO2	1 hour	17.7	94	11.7	655	17%

Staff Assessment for LECEF. December 31, 2001. California Energy Commission

In order to mitigate against this contribution to a cumulative impact, the CEC is requiring that the applicant mitigate 22.1 tons of PM_{10} by contributing to regional PM_{10} reduction programs managed by the BAAQMD. The CEC has reasoned that as current PM_{10} violations only occur during the fall and winter (1/2 of the year), LECEF will only need to mitigate for half of their PM_{10} emissions. Regional PM_{10} reduction programs managed by the BAAQMD include retrofitting and replacing old school buses and wood stoves in the bay area.

With the mitigation listed above, the CEC has determined that the LECEF would not have any significant air quality impacts. As evidenced in the US Dataport FEIR, the City uses different "thresholds of significance" from the CEC in determining the significance of air quality impacts. Shown in Table 1, these thresholds are recommended by the BAAQMD for new stationary source emissions. Using these thresholds, the City would find the LECEF to have significant air quality impacts resulting from NOx and PM_{10} emmissions. While the emission reduction credits required by BAAQMD could theoretically mitigate against significant NOx emissions, they entail taking credit for past actions at other facilities. Thus, while this program may assist regional air quality, it does not provide direct mitigation for new NOx emissions. In addition, while contributions to regional PM_{10} reduction program can improve air quality, it does not provide sufficient mitigation for project specific impacts. Thus, conclusions in the CEC's Staff Assessment would conflict with the City's CEQA thresholds, as evidenced in the US Dataport FEIR.

Biological Resources

As the proposed PD rezoning proposes to cover the same area approved under the original US Dataport project, many of the biological impacts are similar between the projects. The US Dataport FEIR determined that the original Dataport project would have significant biological impacts through the removal of up to 110 acres of suitable habitat for Burrowing Owls. As the LECEF facility will not expand the footprint of the original Dataport project, these impacts have been previously addressed. The Staff Assessment provides new analysis of three potential biological impacts: 1) increased nitrogen deposition on serpentine soils, 2) the installation of a new stormwater outfall, 3) loss of burrowing owl habitat. The CEC has concluded that the LECEF would not have any significant impacts to biological resources.

In the Staff Assessment, the CEC has concluded that nitrogen emissions from the LECEF could result in adverse impacts to serpentine habitats on Coyote Ridge in South San Jose. Increased deposition of nitrogen oxide has been shown to facilitate the propagation of non-native plant species in serpentine habitats, which could adversely threaten fragile plant communities and dependent species such as the Bay

Checkerspot Butterfly. Although the amount of nitrogen deposition from LECEF is expected to be .0392 kilograms per hectare per year, much less than the .28 kilogram modeled impact from the Metcalf Energy Center in South San Jose, the CEC is requiring that the applicant place 19 acres of suitable serpentine habitat in Kirby Canyon into a conservation easement.

During the project planning stage for the LECEF, the Santa Clara Valley Water district raised concerns regarding stormwater drainage and existing outfalls. In response to these concerns, the project will extend an existing stormwater outfall from the levy on the eastern boundary of the site into Coyote Creek itself. The CEC has concluded within the Staff Assessment that the pipeline will be aligned to avoid the removal of any ordinance sized trees or riparian vegetation which could cause significant biological impacts.

In order to mitigate the removal of up to 13.5 acres of burrowing owl habitat by LECEF, the CEC is requiring that the applicant either provides on-site habitat or purchase off-site mitigation lands, within or outside the region. As established through the previous project FEIR's, including USDataport's, the City does not accept lands outside the region as mitigation for the removal of burrowing owl habitat within the city, as this does not assist local owl populations. Loss of burrowing owl habitat was identified as a significant impact in the USDataport FEIR, as the City uses a different standard for determination of significant regarding burrowing owl habitat.

Noise

Replacement of the CREC facility with the LECEF will result in a reduction of noise impacts from the project site. The US Dataport FEIR concluded that the original project would have significant noise impacts by substantially increasing ambient noise levels along Coyote Creek, which is designated as Public Parks & Open Space within the Alviso Master Plan. As shown in the attached Figure 1, while the LECEF will incrementally increase noise levels along the perimeters of the project site, there will be an overall reduction in noise impacts when compared with the CREC and backup diesel generators, and the project will meet noise standards for public parks as established in the General Plan.

Visual Resources

The revised PD rezoning will entail replacing the CREC facilities with new LECEF buildings and equipment. This will include four 90-foot combustion (HRSG) stacks and two 60-foot cooling towers. From both State Route 237 (designated as a Landscaped Throughway on the General Plan Scenic Routes and Trails Map) and the planned Bay Trail, which borders the northern and eastern perimeters of the project site, there are direct viewsheds across the project site. Operation of the powerplant will result in the production of visible plumes from the cooling towers. Within the Staff Assessment, the CEC has determined that cooling tower plumes would be visible approximately 16 percent of all daylight hours and 21 percent of winter & spring daylight hours. Plume formation would be more pervasive in winter/spring than other seasons, and could reach 121 high and 46 feet long (10% of all plumes).

Under the new arrangement of buildings and facilities on the project site, the USDataport campus will surround the LECEF facility and PG&E Substation on the southern, eastern, and northern sides. The western portion of the project, which is owned by the City, is designated Public / Quasi Public and will not allow the location of USDataport buildings. The USDataport industrial buildings are anticipated to be up to approximately 85 feet in height (three stories) which will provide extensive shielding of the LECEF on three sides.

However, in contrast to the original CREC facility, the LECEF facility will be owned and operated independently of the US Dataport facility. Due to current economic conditions, it is not currently anticipated that the US Dataport facility will begin construction within the next few years. Under restrictions enforced by the State, the LECEF plant should have completed construction and be operating by the end of 2002. Thus, it is expected that the LECEF facility will exist on the project site for several years without the benefit of screening provided by the USDataport project buildings.

In anticipation of this visual impact, the CEC has required that the applicant provide landscaping on all four perimeters of the project site. Within its Staff Assessment, the CEC has concluded that this landscaping would effectively screen the LECEF facility within 5 years and avoid significant visual impacts. However, as evidenced by the photosimulations included in the Staff Assessment, the landscaping provided will require 20 years to reach a sufficient height that would screen the facility and there will still be an adverse short term visual impact from the facility on nearby viewsheds.

The CEC has determined that the visual plumes produced from the LECEF will not have a significant visual impact, based on their size and frequency of occurrence. In response to the City's request that the project demonstrate it is using the "best commercially feasible technology for plume visibility reduction", the CEC has required that LECEF developer submit to the City an analysis of commercially feasible and available technologies for plume reduction prior to construction. The CEC also anticipates that when the project converts to a combined cycle powerplant in three years, better plume-abatement technology will be used by LECEF.

The Final EIR for the original US Dataport project concluded that the placement of twelve industrial-type buildings and two towers up to 95 feet in height in this location would have a significant unavoidable impact to visual resources. Despite the provision of landscaping surrounding the LECEF and demonstration that the power plant is using the best commercially-feasible technology for plume abatement, it is reasonable to conclude that the CEC's conclusions regarding visual impacts is in conflict with the US Dataport EIR and City standards.

ANALYSIS

The key issues associated with this Planned Development rezoning are land use and consistency with the Alviso Master Plan (AMP). Other project specifics were discussed in the previous zoning file number PDCSH00-06-048.

Land Use

The proposed land use, power generation facility, is consistent with the allowed use for the project site. At the project's ultimate build out, the LECEF will be surrounded by low intensity industrial/data center buildings to the far north, south and east. The PG&E substation for the North San Jose Transmission Project will be located directly the north of the power facility. The parcel directly to the west, currently vacant WPCP buffer lands, is also being rezoned to allow power generation or other utility uses, similar to the LECEF.

The proposed project with the inclusion of the LECEF is generally consistent with the land use designations identified in the Alviso Master Plan (AMP). The LECEF would be located on lands designated as Light Industrial. The Light Industrial designation "allows a wide variety of industrial uses, excluding any uses with unmitigated hazardous or nuisance effects." Power generation facilities are

industrial uses and as proposed, this project will not have any unmitigated hazardous impacts or nuisances (See Staff Assessment for mitigation discussion).

The AMP states that only low intensity uses (those with low employment densities) are allowed in the Light Industrial area located near Coyote Creek. The proposed LECEF is a low intensity use that will require a maximum of 20 employees on site. There will be generally ten persons on site during each day and night shift. The area that was formerly zoned for the CREC will be rezoned to allow uses consistent with the WPCP or an energy facility as also allowed in the previous zoning, which is consistent with the Public/Quasi-Public land use designation. The project will maintain a minimum of 30% of the site as landscaped open space. Thirty percent (30%) of the site equates to 45.12 acres that would be open space habitat, setbacks, a trail and landscaped buffer land. The project will also continue to include an easement for the Bay Trail across the northern portion of the site, which was a condition of the original PD zoning approval.

Building Height and Landscaping

The General Development Plan in the proposed rezoning includes Development Standards that require the maximum building height to conform to the General Plan. Currently the General Plan height limit for buildings on the project site is 100 feet. A General Plan Amendment was approved by City Council on November 6, 2001 to raise the maximum building height limit to 100 feet for the 140-acre site located north of State Route 237 and approximately 2000 feet east of Zanker Road, which is the USDataport site. The proposed structures, as shown in the conceptual building elevations, could reach a height of 90 feet. The two combustion towers have a maximum height of 90 feet and the two cooling towers have a maximum height of 60 feet. The project includes a significant amount of setback area that would buffer adjacent uses from this height. The LECEF is set back a greater distance from Highway 237 than the Data Center and so would have more setback and landscaping to create visual separation between the project and public view. The height of the LECEF structures will be visible to the public until project landscaping reaches a sufficient height to provide screening. The conceptual site plans and landscaping have been provided for illustration purposes only and will have to be revised at the time of the Planned Development permits to reflect the approved zoning/general development requirements.

Setbacks

The AMP references the City's Industrial Design Guidelines for setback standards and includes specific language that projects should conform to the recommendations of the City's Riparian Corridor Policy Study. The AMP's Industrial/Non-Industrial Objective also states that, "setbacks and buffers should be established to protect environmental resources (e.g. Coyote Creek) and "sensitive uses" (e.g., residential, day care, and school uses) from potential negative impacts of industrial use. The proposed LECEF and the surrounding data center use is located outside the main Alviso village area, and is removed from the main activity center of the master plan area. The project would include a minimum 25-foot setback for any building or road from all property lines. This setback is larger than the standard for industrial development, but appropriate given the large scale of the proposed project. The project also includes a 100-foot setback from the Coyote Creek riparian corridor. The proposed LECEF would not be directly adjacent to the Coyote Creek riparian corridor. The LECEF would be located closer to the center of the project site and would be adequately screened with fast-growing landscaping and the data center buildings when the project is completed.

CONCLUSION

Staff concludes for the reasons stated above that overall the proposed rezoning as conditioned, is consistent with the General Plan, substantially meets the objectives of the Alviso Master Plan, and concludes that environmental issues have been adequately addressed.

Planning staff recommends approval of the proposed Planned Development Rezoning as conditioned for the following reasons:

1. The proposed project is consistent with the San José 2020 General Plan Land Use/Transportation Diagram designations of Light Industrial and Public/Quasi-Public.

2. The proposed project is generally consistent with the Alviso Master Plan.

3. The proposed project is consistent with the draft Bay Trail Master Plan.

4. The project does include adequate mitigation for potential environmental impacts associated with the project. The environmental impacts and mitigation was analyzed through the EIR entitled, "USDataport Planned Development Rezoning and Prezoning," certified by the City Council on April 3, 2001 and the California Energy Commission Staff Assessment for the Los Esteros Critical Energy Facility, dated December 2001, revised on February 6, 2002.

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